

RPS Implementation, Phase 2
CEC-CPUC RPS Collaborative Staff Workshop
SEP Payment Guidelines
May 12, 2003

I. INTRODUCTION:

SB 1078 allocates the following RPS implementation responsibilities to the CEC:

PUC 399.13. The Energy Commission shall do all of the following:

- (a) Certify eligible renewable energy resources that it determines meet the criteria described in subdivision (a) of Section 399.12.
- (b) Design and implement an accounting system to verify compliance with the renewables portfolio standard by retail sellers, to ensure that renewable energy output is counted only once for the purpose of meeting the renewables portfolio standard of this state or any other state, and for verifying retail product claims in this state or any other state. In establishing the guidelines governing this system, the Energy Commission shall collect data from electricity market participants that it deems necessary to verify compliance of retail sellers, in accordance with the requirements of this article and the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code). In seeking data from electrical corporations, the Energy Commission shall request data from the commission. The commission shall collect data from electrical corporations and remit the data to the Energy Commission within 90 days of the request.
- (c) Allocate and award supplemental energy payments pursuant to Section 383.5 to eligible renewable energy resources to cover above-market costs of renewable energy.

SB 1038 provides eligibility requirements for supplemental energy payments made to renewable generators which are selling renewable energy to RPS obligated entities. A copy of the relevant statutory language is attached in the Appendix.

The purpose of this workshop is to solicit input from interested parties on the establishing guidelines for SEP payments.

Below is a list of questions intended to stimulate open discussion in the workshop. These questions are sequenced so that discussion in later questions build upon information developed in earlier questions. Therefore, you are encouraged to read through and think about your responses to all the questions.

Parties are also encouraged to raise other questions that apply to the topics at the workshop.

II. QUESTIONS:

Supplemental Energy Payment (SEP) Payment Guidelines

Under the Renewable Energy Program of SB 1038, funding is contingent on eligible renewable generation facilities meeting performance requirements.

Funding Eligibility

1. How should the CEC define “New” for the purpose of SEP eligibility?
For example, should “New” be defined as coming online after a specific date?
If so, what date is appropriate?
If such a date is chosen, does the “New” designation apply forever, or does it expire after some period of time?
2. Repowered renewable generation facilities are eligible for SEPs “if the capital investment to repower the existing facility equals at least 80 percent of the value of the repowered facility.” Section 383.5 (d)(3)
How should the CEC confirm that a repowered renewable generation facility meets this standard?
3. Are renewable generation facilities that began receiving or have had funds encumbered from the New Account before January 1, 2002 eligible for SEPs? If yes, what conditions if any, would apply to the award of SEPs for these facilities?
4. To whom can SEPs be made: the facility owner/operator; the retail supplier; and/or potentially an intermediary that has taken possession of the renewable generation from the renewable generation facility and has the contract with the retail seller?

SEP Payment

5. What are the performance standards for paying SEPs?
Are there any circumstances where SEPs would be paid when generation has not occurred?
6. On what frequency should SEPs be paid?
7. Under what circumstances should SEPs be terminated for a facility? How would termination provisions in the CEC’s SEP agreements affect the ability of new projects to secure financing, if at all?

SEP Award and Allocation

8. SEPs are to be awarded only to facilities eligible for funding.
At what point in the procurement process is funding eligibility established?
At what point in the procurement process should funds be encumbered?
How does the encumbering of funds, or the state's budget deficit, affect the ability of new projects to secure financing, if at all?
9. Under what conditions, if any, should the CEC facilitate or administer auctions for SEPs?
10. Under what conditions, if any, should the CEC apply targets, milestones, or other conditions as requirements for SEP payment?
11. The CEC has authority to require a forfeitable bid bond or other financial guaranty from applicants competing for funding.
383.5 (d)(2)(E) The Energy Commission may require applicants competing for funding to post a forfeitable bid bond or other financial guaranty as an assurance of the applicant's intent to move forward expeditiously with the project proposed. The amount of any bid bond or financial guaranty may not exceed 10 percent of the total amount of the funding requested by the applicant.

Under what conditions should the CEC exercise this authority?
Which form(s) of financial guaranty are appropriate for the CEC to accept?

12. The CEC has authority to consider establishing caps on SEPs.
383.5 (d)(2)(A)(i) The Energy Commission may establish caps on supplemental energy payments. The caps shall be designed to provide for a viable energy market capable of achieving the goals of Article 16 (commencing with Section 399.11). The Energy Commission may waive application of the caps to accommodate a facility, if it is demonstrated to the satisfaction of the Energy Commission, that operation of the facility would provide substantial economic and environmental benefits to end use customers subject to the funding requirements of Section 381.
 - i. On what basis, if any, should SEPs be capped?
 - a. Per unit production;
 - b. By time period, such as a utility's procurement cycle;
 - c. By retail seller or category of retail seller (e.g., UDC, ESP);
 - d. Relative to the market price referent or the balance remaining in the New Account.
 - e. Other?

- ii. What methodology should the CEC adopt to confirm that the “substantial economic and environmental benefits” condition exists?
13. The CEC has the responsibility to manage funds given multiple retail sellers and categories of retail sellers.
383.5 (d)(2)(A)(v) Funds shall be managed in an equitable manner in order for retail sellers to meet their obligation under Article 16 (commencing with Section 399.11).

Whether or not caps are established, should the CEC allocate available funding among retail sellers or retail seller categories?

14. The CEC may provide funding preference based on the following:
383.5 (d)(2)(F) In awarding funding, the Energy Commission may provide preference to projects that provide tangible demonstrable benefits to communities with a plurality of minority or low-income populations.

How should the CEC establish that such a condition exists?
Under what conditions would such a preference be applied?

15. If funding demand exceeds supply, how should the CEC allocate funding among eligible facilities?
16. In the implementation of the New Renewables Resources Account from 1998 to 2002 under Senate Bill 90 (Chapter 854, Statutes of 1996), projects were limited to receive no more than 25 percent of the funds available from each auction. Should such a limit remain in place consistent with the prior program provisions?
17. How will the awarding of SEPs interact with the CEQA requirements for project development?

Reporting and Verification

18. What entities are responsible for reporting the term of the contract for eligible generation (383.5 (d)(2)(A)(iii)) and the actual generation eligible for SEPs?
383.5 (d)(2)(A)(iii) Supplemental energy payments awarded to facilities selected by an electrical corporation pursuant to Article 16 (commencing with Section 399.11) shall be paid for the lesser of 10 years, or the duration of the contract with the electrical corporation.
- 383.5 (d)(2)(A)(iv) The Energy Commission shall reduce or terminate supplemental energy payments for projects that fail either to commence and maintain operations consistent with the contractual*

obligations to an electrical corporation, or that fail to meet eligibility requirements.

19. What data sources should be acceptable for reporting eligible generation to claim SEPs?
20. What standard of review by the CEC is appropriate for confirming data reporting SEP eligible generation?
21. On what frequency is eligible generation reporting required for SEPs?

Appendix for Phase 2 RPS Workshop May 12, 2003

Senate Bill 1038 (Sher, Statutes of 2002, Chapter 515)

Public Utilities Code

383.5. (a) It is the intent of the Legislature in establishing this program, to increase the amount of renewable electricity generated per year, so that it equals at least 17 percent of the total electricity generated for consumption in California.

(b) As used in this section, the following terms have the following meaning:

(1) "In-state renewable electricity generation technology" means a facility that meets all of the following criteria:

(A) The facility uses biomass, solar thermal, photovoltaic, wind, geothermal, fuel cells using renewable fuels, small hydroelectric generation of 30 megawatts or less, digester gas, municipal solid waste conversion, landfill gas, ocean wave, ocean thermal, or tidal current, and any additions or enhancements to the facility using that technology.

(B) The facility is located in the state or near the border of the state with the first point of connection to the Western Electricity Coordinating Council (WECC) transmission system located within this state.

(C) For the purposes of this subdivision, "solid waste conversion" means a technology that uses a noncombustion thermal process to convert solid waste to a clean burning fuel for the purpose of generating electricity, and that meets all of the following criteria:

(i) The technology does not use air or oxygen in the conversion process, except ambient air to maintain temperature control.

(ii) The technology produces no discharges of air contaminants or emissions, including greenhouse gases as defined in Section 42801 of the Health and Safety Code.

(iii) The technology produces no discharges to surface or groundwaters of the state.

(iv) The technology produces no hazardous wastes.

(v) To the maximum extent feasible, the technology removes all recyclable materials and marketable green waste compostable materials from the solid waste stream prior to the conversion process and the owner or operator of the facility certifies that the those materials will be recycled or composted.

(vi) The facility at which the technology is used is in compliance with all applicable laws, regulations, and ordinances.

(vii) The technology meets any other conditions established by the State Energy Resources Conservation and Development Commission.

(viii) The facility certifies that any local agency sending solid waste to the facility is in compliance with Division 30 (commencing with Section 40000) of the Public Resources Code, has reduced, recycled, or composted solid waste to the maximum extent feasible,

and shall have been found by the California Integrated Waste Management Board to have diverted at least 30 percent of all solid waste through source reduction, recycling and composting.

(d) (1) Fifty-one and one-half percent of the funds collected pursuant to paragraph (6) of subdivision (c) of Section 381, shall be used for programs designed to foster the development of new in-state renewable electricity generation technology facilities, and to secure for the state the environmental, economic, and reliability benefits that continued operation of those facilities will provide.

(2) Any funds used for new in-state renewable electricity generation technology facilities pursuant to this subdivision shall be expended in accordance with the report, subject to all of the following requirements:

(A) In order to cover the above market costs of renewable resources as approved by the commission and selected by retail sellers to fulfill their obligations under Article 16 (commencing with Section 399.11), the Energy Commission shall award funds in the form of supplemental energy payments, subject to the following criteria:

(i) The Energy Commission may establish caps on supplemental energy payments. The caps shall be designed to provide for a viable energy market capable of achieving the goals of Article 16 (commencing with Section 399.11). The Energy Commission may waive application of the caps to accommodate a facility, if it is demonstrated to the satisfaction of the Energy Commission, that operation of the facility would provide substantial economic and environmental benefits to end use customers subject to the funding requirements of Section 381.

(ii) Supplemental energy payments shall be awarded only to facilities that are eligible for funding under this subdivision.

(iii) Supplemental energy payments awarded to facilities selected by an electrical corporation pursuant to Article 16 (commencing with Section 399.11) shall be paid for the lesser of 10 years, or the duration of the contract with the electrical corporation.

(iv) The Energy Commission shall reduce or terminate supplemental energy payments for projects that fail either to commence and maintain operations consistent with the contractual obligations to an electrical corporation, or that fail to meet eligibility requirements.

(v) Funds shall be managed in an equitable manner in order for retail sellers to meet their obligation under Article 16 (commencing with Section 399.11).

(B) The Energy Commission may determine as part of a solicitation, that a facility that does not meet the definition of "in-state renewable electricity generation technology" facility solely because it is located outside the state, is eligible for funding under this subdivision if it meets both of the following requirements:

(i) It is located so that it is or will be connected to the Western Electricity Coordinating Council (WECC) transmission system.

(ii) It is developed with guaranteed contracts to sell its generation to end use customers subject to the funding requirements of Section 381, or to marketers that provide this guarantee for resale of the generation, for a period of time at least equal to the amount of time it receives incentive payments under this subdivision.

(C) Facilities that are eligible to receive funding pursuant to this subdivision shall be registered in accordance with criteria developed by the Energy Commission and those facilities may not receive payments for any electricity produced that has any of the following characteristics:

(i) Is sold under an existing long-term contract with an existing in-state electrical corporation if the contract includes fixed energy or capacity payments, except for that electricity that satisfies the provisions of subparagraph (C) of paragraph (1) of subdivision (c) of Section 399.6.

(ii) Is used onsite or is sold to customers in a manner that excludes competitive transition charge payments, or is otherwise excluded from competitive transition charge payments.

(iii) Is produced by a facility that is owned by an electrical corporation or a local publicly owned electric utility as defined in subdivision (d) of Section 9604.

(iv) Is a hydroelectric generation project that will require a new or increased appropriation of water under Part 2 (commencing with Section 1200) of Division 2 of the Water Code.

(D) Eligibility to compete for funds or to receive funds shall be contingent upon having to sell the output of the renewable electricity generation facility to customers subject to the funding requirements of Section 381.

(E) The Energy Commission may require applicants competing for funding to post a forfeitable bid bond or other financial guaranty as an assurance of the applicant's intent to move forward expeditiously with the project proposed. The amount of any bid bond or financial guaranty may not exceed 10 percent of the total amount of the funding requested by the applicant.

(F) In awarding funding, the Energy Commission may provide preference to projects that provide tangible demonstrable benefits to communities with a plurality of minority or low-income populations.

(3) Repowered existing facilities shall be eligible for funding under this subdivision if the capital investment to repower the existing facility equals at least 80 percent of the value of the repowered facility.

(4) Facilities engaging in the combustion of municipal solid waste or tires are not eligible for funding under this subdivision.

(5) Production incentives awarded under this subdivision prior to January 1, 2002, shall commence on the date that a project begins electricity production, provided that the project was operational prior to January 1, 2002, unless the Energy Commission finds that the project will not be operational prior to January 1, 2002, due to circumstances beyond the control of the developer. Upon making a finding that the project will

not be operational due to circumstances beyond the control of the developer, the Energy Commission shall pay production incentives over a five-year period, commencing on the date of operation, provided that the date that a project begins electricity production may not extend beyond January 1, 2007.

(6) Facilities generating electricity from biomass energy shall be considered an in-state renewable electricity generation technology facility to the extent that they certify to the satisfaction of the Energy Commission that fuel utilization is limited to the following:

(A) Agricultural crops and agricultural wastes and residues.

(B) Solid waste materials such as waste pallets, crates, dunnage, manufacturing, and construction wood wastes, landscape or right-of-way tree trimmings, mill residues that are directly the result of the milling of lumber, and rangeland maintenance residues.

(C) Wood and wood wastes that meet all of the following requirements:

(i) Have been harvested pursuant to an approved timber harvest plan prepared in accordance with the Z'berg-Nejedly Forest Practice Act of 1973 (Ch. 8 (commencing with Sec. 4511), Pt. 2, Div. 4, P.R.C.).

(ii) Have been harvested for the purpose of forest fire fuel reduction or forest stand improvement.

(iii) Do not transport or cause the transportation of species known to harbor insect or disease nests outside zones of infestation or current quarantine zones, as identified by the Department of Food and Agriculture or the Department of Forestry and Fire Protection, unless approved by the Department of Food and Agriculture and the Department of Forestry and Fire Protection.